



CNR: KAHC010213142013

NC: 2026:KHC:48800-DB
ITA No. 167 of 2013

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

INCOME TAX APPEAL NO.167 OF 2013

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX,
C.R. BUILDING, QUEENS ROAD,
BANGALORE.
 2. THE DEPUTY COMMISSIONER OF INCOME-TAX,
CIRCLE-11(1), RASHTROTHANA BHAVAN,
NRUPATHUNGA ROAD,
BANGALORE.
- ...APPELLANTS

(BY SRI. SANMATHI E.I., ADVOCATE)

AND:

APOTEX RESEARCH PRIVATE LTD.,
NO.1, BOMMASANDRA INDUSTRIAL AREA,
4TH PHASE,
BOMMASANDRA INDUSTRIAL ESTATE P.O.,
BANGALORE-560 099.

...RESPONDENT

(BY SRI. T. SURYANARAYANA, SENIOR ADVOCATE FOR
SMT. TANMAYEE RAJKUMAR, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE; ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.918/BANG/2011 DATED 23.11.2012 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-11(1), BANGALORE.



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THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The department has filed the present appeal under Section 260-A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning the order dated 23.11.2012 passed by the Income Tax Appellate Tribunal, Bengaluru [**the Tribunal**] in I.T.A.No.918/Bang/2011 for the Assessment year 2007-08. The department had projected the following questions of law for consideration:

"1. Whether the Tribunal was right in imposing the decision of the other benches of the Tribunal in the case of assessee to reject the comparables, when selection of comparables in a case depends in Transfer Pricing on assessee specific?

2. Whether the Tribunal was correct in rejecting the comparables selected by the Assessing Officer on the basis of the decision of the Tribunal without taking into consideration the reasons assigned by the Transfer Pricing Officer and also when selection of a case as a comparable is a assessee specific?

3. Whether the Tribunal correct in directing inclusion of Neeman Medical International [Asia] Limited as a comparable, when the business activity of the assessee company i.e., pharmaceutical research and development services and the business of the comparable company is



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clinical research and the activities were different and recorded a perverse finding?

4. Whether the Tribunal was correct in holding that, the services rendered by the assessee to its associated enterprises has to be considered at arms length price and no adjustment on arms length price to be made without taking into consideration the reasons assigned by the Transfer Pricing Officer for arriving at the adjustment in arms length price and recorded a perverse finding?"

2. The said questions were considered by this Court and, by an order dated 10.07.2018, this Court found that no substantial questions of law arose in the present appeal and, accordingly, dismissed the same.

3. This Court had also referred to the earlier decision in **Commissioner of Income Tax and Another V. M/s Softbrands India Pvt. Ltd.**¹ and observed that, unless the findings of the learned Tribunal are found to be *ex facie* perverse, an appeal under Section 260A of the Act would not be maintainable.

4. The Supreme Court did not accept the said view and, therefore, the present matter was remanded to this Court along with several other petitions.

¹ I.T.A.Nos.536/2015 c/w 537/2015 decided on 25.06.2018



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5. The learned counsel appearing for the department fairly states that third question may be considered as a substantial question of law.

6. We note that the learned Tribunal's findings in this regard are as under:

"17. Now we will consider the claim of the assessee that Neeman Medical International (Asia) Limited is not a consistently loss making company and therefore it should not have been excluded for comparability purposes on the said ground. In this regard, we find that the TPO does not dispute the fact that Neeman Medical International (Asia) Limited is functionally comparable with that of the assessee. The only reason given by the TPO for excluding the aforesaid company in the list of comparables is that for the F.Y. 2004-05, this company made a loss. It is, however, noticed that from the profit & loss account of this company for the year ended 31.03.2006 which contains the figures of income & expenditure as on 31.03.2005 that income of this assessee was ₹4.05 crores and the expenditure before tax was ₹4.38 crores. Thus, Neeman Medical International (Asia) Limited is not a consistently loss making company. To apply the filter of consistent loss making company, it is necessary that the loss should be consistent whereas in the case of Neeman Medical International (Asia) Limited, the losses are not consistent as can be seen from the above. We also find that the assessee's application u/s. 154 of the Act in this regard has not been rejected by the TPO. We are therefore of the view that Neeman Medical International (Asia) Limited which is otherwise functionally comparable, should be considered for the purpose of comparability."

7. It is contended on behalf of the department that the Neeman Medical International (Asia) Ltd. is not a comparable, as it is



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functionally dissimilar. Concededly, functional dissimilarity was not the ground on which the department had sought to contend that the said entity was not comparable with the Assessee. The findings of the learned Tribunal also indicate that no such contention was advanced. The department had sought to exclude Neeman Medical International (Asia) Ltd. as a comparable, on the ground that it had consistently incurred losses. The learned Tribunal, however, found as a matter of fact that the said assertion was not correct; the said company was not a consistently loss making company. The department is unable to point out any error in this finding.

8. In the given circumstances, no question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

AT
List No.: 1 Sl No.: 18